ance — that the property in the possession of the accused was stolen property; and

(2) That such suspicion was reasonable. (The case of *Munusamy* v. *Public Prosecutor*[1]).

It is only after the prosecution has discharged the burden of proving the existence of these two essential prerequisites to the satisfaction of the court — not, be it noted, to the satisfaction of the police officer or anyone else — that the onus then shifts to the accused to account to the satisfaction of the court as to how he came to be in possession of that property. As Thomson J. (as he then was) indicated in the case of *Arunasalam Thevar* v. *Public Prosecutor*,[4] it is not sufficient for the magistrate simply to ask himself the question whether the accused has given a satisfactory explanation as to how he came by the article in his possession. He must first ask himself the question — and be satisfied that the answer is in the affirmative — whether the accused was carrying something that might be reasonably suspected of being stolen. Each case, of necessity, must depend upon its own facts but, generally speaking, it is of obvious importance in assisting the Court to determine whether the police officer's suspicion at the time was reasonable — and, indeed, whether the accused's explanation for possession of the property was, and is, satisfactory — to hear in evidence the explanation given by the accused to the police officer at the time when first asked to account for possession of such property."

The learned deputy public prosecutor in this appeal has very rightly conceded that he is not in a strong position to support the conviction. In view of the extremely unsatisfactory evidence produced by the prosecution, there was, in fact, no basis for calling upon the accused to enter on his defence.

Another sad aspect of this case is that the learned magistrate having once decided to call upon the defence and the defence having given an explanation which could very reasonably be true still convicted him. One of the defence witnesses deposed that the six jacks were bought from the shop of Hock Tong Hin by the appellant and brought by him in the witness's car. This witness was never cross-examined by the prosecution at all. In spite of this the learned magistrate has convicted the appellant. This, I think, was entirely wrong. When the prosecution chooses not to cross-examine a witness the natural inference is that it accepts the evidence of that witness in its totality.

I also take this opportunity to impress upon the learned magistrate that once a notice of appeal is filed, it is his duty to give his grounds of decision. Besides a few remarks which he seems to have made at the end of the submissions, there is nothing in the record to show how the learned magistrate arrived at the decision which is now appealed against. Section 302(3) of the Straits Settlements Criminal Procedure Code enacts that: —

"When a notice of appeal has been lodged the court appealed from shall make a signed copy of the grounds of decision in the case and cause the same to be served upon the appellant or his advocate by leaving the said copy at the address mentioned in the notice of appeal, or by posting it by registered post addressed to the appellant at the said address."

It may also serve a useful purpose if I take this opportunity to repeat what Rigby J. said in the case of *Woo Hon Weng* v. *Public Prosecutor*[3] regarding the admissibility of those parts of the statement of the accused to the police which tend to explain or constitute what may be regarded as a factor on his part to give a satisfactory explanation of how he came into possession of the goods in question: —

"Apart from principles of elementary common sense which must necessarily impel the admissibility of such evidence, the case of *Tan Hoe Seng* v. *Public Prosecutor*[5] is clear authority for the proposition that any explanation given by the accused to the police on a prosecution under this section can be — and, indeed, should be — used in evidence, whether it be for or against the accused, and the provisions of section 124 of the Criminal Procedure Code have no application under this section."

As a result the appeal is allowed and the conviction and sentence is set aside. The fine, if paid, shall be refunded to the appellant and the six car jacks returned to him.

Appeal allowed.

Solicitors: *Murphy & Dunbar.*

RE MICHAEL JOHN MUSTILL

[O.C.J. (Yong J.) December 14, 1970]

[Kuala Lumpur — Originating Motion No. 36 of 1970]

Advocates and Solicitors — Admission — Ad hoc — Special grounds — Special qualification or experience of a nature not available amongst advocates and solicitors in Malaysia for the purpose of particular case — Advocates and Solicitors Ordinance, 1947, ss. 5(5) and 8A.

The petitioner, a Queen's Counsel, sought admission as an advocate and solicitor of the High Court in Malaya under section 8A of the Advocates and Solicitors Ordinance, 1947, for the purpose of appearing as leading counsel for a defendant in a suit in connection with the loss of cargo of steel pipes worth nearly $1,000,000 on board ship during a voyage from Prai to Brunei under a policy of marine insurance. The petitioner had for the past 15 years been actively engaged in the practice of commercial law at the English Bar and was an acknowledged expert in the field of marine insurance and charterparties, he being a joint editor of the chapter dealing with "Marine Insurance" in *Halsbury's* Laws of England and of the current edition of *Scrutton* on Charterparties. Counsel for the plaintiff in the suit strongly opposed the motion on the ground that the petitioner had failed to show "special grounds" under section 5(5) of the Ordinance which provided for the shortening of the statutory period of posting of the notice and the dispensing of reading in chambers.

Held: (1) "special grounds" imposed under section 5(5) of the Advocates and Solicitors Ordinance are not relevant to applications for *ad hoc* admissions under section 8A;

(2) in this case, there was sufficient evidence before the court to hold that the petitioner is a person who has special qualifications and experience in the branch of the law of marine insurance and charterparties entitling him to be admitted as advocate and solicitor under section 8A of the Ordinance.

Case referred to:-

(1) *Re G.G. Ponnambalam* [1969] 2 M.L.J. 263.

MOTION.

D. L. Pickard for the petitioner.

Mohamed Haji Said (Federal Counsel) for the Attorney-General.

K. A. Menon for the Bar Council of Malaya and Bar Committee, Selangor.

Ng Ek Teong for the plaintiff in the Civil Suit.

Yong J.: This motion by Michael John Mustill, a Barrister-at-Law and a Queen's Counsel, of London

petitions for his admission as an advocate and solicitor of the High Court in Malaya for the purpose of appearing as leading counsel for the first defendant in High Court Civil Suit No. 757 of 1970 and in any appeal therefrom, under section 8A of the Advocates and Solicitors Ordinance 1947.

Section 8A came into force on April 16, 1970. I was informed by counsel that this was the first application of its kind for *ad hoc* admissions under this new section.

The Attorney-General, the Bar Council of Malaya, and the Selangor Bar Committee did not object to the motion but counsel for the plaintiffs in the suit strongly opposed the same (as he is entitled to under sub-sections (3) and (4) of section 8A) on the ground that the petitioner had failed to show "special grounds" which were required to be shown under section 5(5) of the Advocates and Solicitors Ordinance 1947 for the shortening of the statutory period of posting of the notice as well as for dispensation of reading in chambers. He relied on the case of *Re G. G. Ponnambalam*[1] and further contended that no difficult points of law were involved in the suit. No affidavit in support of his contention was filed.

I must point out that Mr. Ponnambalam's case was decided long before section 8A came into force and his application was made under section 5 of the Ordinance for the usual admission, as there was no law then whereby he could have applied for an *ad hoc* admission for the specific purpose of appearing in that particular case. To meet such a problem section 8A was introduced. The relevant parts of section 8A read: —

"(1) Notwithstanding anything contained in this Ordinance the Court may for the purpose of any one case and subject to the following sub-sections admit to practise as an advocate and solicitor any person who if he was a citizen of Malaysia or a permanent resident in Malaysia would be a qualified person within the meaning of this Ordinance.

(2) No person shall be admitted to practise as an advocate and solicitor under sub-section (1) unless —

(a) for the purpose of that particular case he has, in the opinion of the Court, special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia; and

(b) he has been instructed by an advocate and solicitor in Malaysia."

In my opinion "special grounds" imposed under section 5(5) for the shortening of the statutory period of posting of notices and the dispensation of reading in chambers are not relevant to applications for *ad hoc* admissions under section 8A. To hold that "special grounds" should be proved in addition to the conditions laid down in section 8A would render the granting of *ad hoc* admissions even more difficult than ordinary admissions to practise generally throughout Malaya at all times and this would stultify the objects of section 8A of the Ordinance.

Under sub-section (2) of section 8A the court is empowered to admit the petitioner if it is satisfied that he is a qualified person as described in subsection (1) and has special qualifications or experience of a nature not available amongst advocates and solicitors in Malaysia for the purpose of that particular case which requires such qualifications or experience.

In the suit the plaintiffs sued their insurer the first defendant therein for a sum of nearly $1,000,000 for the loss of a cargo of steel pipes on board ship during a voyage from Prai to Brunei under a policy of marine insurance. The first defendant contended that the said policy was warranted "free from particular average" in accordance with "Institute Cargo Clauses (FPA)" and that as only 656 out of the total of 668 steel pipes were lost overboard and the said pipes were not separately insured the first defendant was not liable. As will be seen substantial questions of law relating principally to marine insurance and charterparties will be involved and great difficulties may arise. I do not think that experts or specialists in such a branch of the law are at present available in Malaysia.

The affidavit of Mr. Pickard an advocate and solicitor in Malaya who has instructed the petitioner discloses that the petitioner had for the past fifteen years been actively engaged in the practice of commercial law in the English Bar and that he is an expert in the field of marine insurance and charterparties. He is a joint editor (with Mr. Justice McNair and Mr. Justice Donaldson) of the chapter dealing with marine insurance in the *Halsbury's* Laws of England. He is also the joint editor (with Mr. Justice McNair and Mr. Justice Mocatta) of the current edition of the treatise entitled "*Scrutton* on Charterparties." On the evidence before me I am of the opinion that the petitioner is a person who has special qualifications and experience in this branch of the law of marine insurance and charterparties entitling him to be admitted as an advocate and solicitor under section 8A of the Ordinance.

I have therefore great pleasure in admitting him under section 8A for the specific purpose as stated in his motion.

Admission granted.

Solicitors: *Donaldson & Burkinshaw; Ng Ek Teong & Partners.*